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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1940

No. 1030

M. O. COWAN, D. C. WEBB AND VICTOR KLEIN, TRUSTEES UNDER THE PLAN AND AGREEMENT FOR REOPENING THE EAST TENNESSEE NATIONAL BANK,

Petitioners,

vs.

HAMILTON NATIONAL BANK OF KNOXVILLE, AS TRUSTEE FOR THE ESTATE OF HAL S. HARRIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

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INDEX.

Subject Index.

	Page
Petition for certiorari	1
Summary statement of matters involved	1
The pleadings	1
The decision	2
The appeal	2
The facts	2
Jurisdictional statement	5
Jurisdictional statute	5
Statutes involved	6
Question presented substantial	7
Federal questions raised	8
The questions presented	10
Reasons relied on for the allowance of the writ	10
Prayer and conclusion	14
The brief	15
Opinions of the court below	15
Complete opinions, appendix	15
Jurisdiction	16
Statement of the case	16
Specification of errors	16
Summary of the argument	17
The argument	18
1. The national banking laws constitute a complete code for the organization, operation, liquidation, consolidation and reorganization of a national bank. The rights, powers, liabilities and duties of stockholders consenting to the reorganization of a national bank are determined by applicable Federal Statutes and decisions	18

Page

2. A trust estate lawfully owning stock in a national bank may consent to a plan of reorganization of such a bank and is bound by its consent under applicable Federal laws 21

3. A note executed by a trust estate in an amount equal to a valid existing assessment against the trust estate, pursuant to a plan of reorganization of a national bank made effective under Title 12, U. S. C., Sec. 207, whereby the bank is restored to solvency and the assessment revoked, is a binding obligation of the trust estate 23

4. States will not be permitted by statute or decision to discriminate against national banks or in a collateral proceeding set aside determinations of the Comptroller of the Currency lawfully made in order to defeat the collection of such a note... 24

The appendix 30

Opinions of the court below 30

TABLE OF CASES CITED.

Awotin v. *Atlas Exchange Natl. Bank*, 295 U. S. 209 ..... 11, 13, 20

Brandt v. *Virginia C. & I. Co.*, 93 U. S. 326 ..... 13, 24

Cook County National Bank v. *U. S.*, 107 U. S. 445 .. 11, 19

Davis v. *Elmira Savings Bank*, 161 U. S. 275 20

Deitrick v. *Greaney*, 309 U. S. 190 ..... 11, 13, 20, 24

Dinan v. *1st Natl. Bank of Detroit*, 117 F. (2d) 459 .. 13, 20

Dixon v. *Cannon*, 32 Fed. Sup. 626 ..... 12, 21

Easton v. *Iowa*, 188 U. S. 220 ..... 14, 19

Ex Parte Worcester County National Bank, 279 U. S. 347 20

Forrest v. *Jack*, 294 U. S. 158 ..... 11, 12, 20

Jones National Bank v. *Yates*, 240 U. S. 541 ..... 11, 20

Pufahl v. *Parks*, 299 U. S. 217 12

Page

Richmond v. *Irons*, 121 U. S. 27 ..... 11, 12, 21
Seabury v. *Green*, 294 U. S. 165 ..... 11, 12, 13, 14, 20
Yonkers v. *Downey*, 309 U. S. 590 ..... 11, 13, 20
Young v. *Phillips*, 170 Tenn. 169 25

STATUTES CITED.

U. S. C., Title 12, Sec. 21, et seq. 19
U. S. C., Title 12, Sec. 33, et seq. 19
U. S. C., Title 12, Sec. 66 ..... 7, 12, 21
U. S. C., Title 12, Sec. 81, et seq. 19
U. S. C., Title 12, Sec. 161, et seq. 19
U. S. C., Title 12, Sec. 181, et seq. 19
U. S. C., Title 12, Sec. 207 ..... 2, 3, 6, 10, 16, 18, 19, 21
U. S. C., Title 28, Sec. 344(b) 5, 16

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Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

I.

Summary Statement of Matters Involved.

(a) The Pleadings.

This is a suit in equity brought in the Chancery Court of Knox County, Tennessee, by petitioners as trustees under a plan and agreement for the reorganization of the East Tennessee National Bank of Knoxville (which reorganiza-

tion was made effective by the Comptroller of the Currency by virtue of the Bank Conservation Act (March 9, 1933, c. 1, Sec. 207, 48 Stat. 3; U. S. C. A. Title 12, Sec. 207)) against the respondent, Hamilton National Bank, as executor and trustee under the will of Hal S. Harris, seeking judgment on a note in the principal sum of $28,000.00 executed on behalf of respondent's trust estate in discharging its obligation under said plan of reorganization; to subject collateral in the hands of petitioners to the satisfaction of the judgment sought and to enjoin a pending action at law by respondent against petitioners, wherein was sought a replevin of the collaterals held by petitioners. After various motions, pleas, demurrers, not now pertinent, respondent filed an answer denying the right of recovery and a cross-bill seeking the cancellation of the note held by petitioners and a return of the pledged collateral.

(b) The Decision.

The Chancery Court awarded petitioners a decree in accordance with the prayers of their bill.

(c) The Appeal.

From this decree respondent appealed to the Supreme Court of Tennessee, which Court, on *January 22, 1941,* reversed the decree of the Chancery Court of Knox County, Tennessee. A petition for rehearing, seasonably filed, was overruled on *March 8, 1941.*

(d) The Facts.

The case was tried on the pleadings and a stipulation of fact and a summary of the facts is as follows:

1. *On January 19, 1933,* the East Tennessee National Bank of Knoxville, Tennessee, a national banking association, became insolvent, a receiver was appointed and an

assessment of 100% was thereafter levied against stockholders (R. 30).

2. *On April 20, 1933,* a plan of reorganization of the bank having been prepared and submitted to the Comptroller of the Currency, was by him approved, subject to the fulfillment of the conditions of the plan with certain modifications. This approval was given in the exercise of the discretion vested in the Comptroller of the Currency by the Bank Conservation Act (U. S. C. A. Title 12, Sec. 207) (R. 30-34-35-36-37).

3. In general terms, the plan, as approved, provided for the creation of a trust to which all assets of the bank not required in its recapitalization would be conveyed; the delivery to the trustees so created of notes executed by stockholders in the amount of each stockholder's assessment liability secured to the satisfaction of the Comptroller, representing more than two-thirds of the outstanding shares of stock; the delivery to the trust of all the capital stock of the reorganized bank; the waiver of claims of creditors of the bank against the bank and the substitution therefor of claims against the trust, thereby restoring the bank to solvency; the revocation of the existing assessment against stockholders; the liquidation of assets of the trust for the benefit of creditors by the trustees (R. 31 VII, 106-107).

As to stockholders notes, the plan provided:

> "2. Each stockholder agrees to deliver to the Trustees his promissory note in such form as may be prescribed by the Trustees in an amount equal to the par value of all shares of stock owned or held in trust for such stockholders in the association. It is specifically agreed that among the provisions in the said note shall be the following:
>
> * * * * * * *

(b) This note shall be payable:

* * * * * * *

2. On January 10, 1940, unless prior to said date unsecured depositors have received a total of 70¢ on each dollar of the amount of unsecured deposit in the East Tennessee National Bank at the close of business January 18, 1933, * * *.

(c) Until such time as the note given hereunder is called for payment or matures the maker shall be entitled to any income from collateral deposited to secure the same, and the note shall not bear interest; * * *" (R. 31 VII; 111-112).

4. *On May 10, 1933,* the estate of Hal S. Harris, acting through its then trustee, S. V. Carter, consented to the plan of reorganization and executed its note in accordance with the foregoing requirement (R. 31 VIII). Hal S. Harris, in his lifetime, and after his death in 1927, his trust estate, owned 280 shares of East Tennessee National Bank stock, having a par value of $100.00 per share. The assessment made against this estate was thus $28,000.00 and the note so executed on behalf of the estate $28,000.00 (R. 29 V, 30 V). Carter, as trustee, acted on the advice of counsel and at the written request and direction of the life beneficiary of the trust, who also had a general power of appointment over the trust estate (R. 31 VIII; 31 IX; 7, 8). At the time Carter, Trustee, consented to the plan he was Chairman of the Board of Directors of the bank but took no part in the reorganization movement other than to consent for himself individually as a stockholder. At this time the affairs of the bank were in the hands of a receiver, and Carter, prior to the reopening terminated his connection with the bank, and was never again employed by it (R. 41 XXVI).

5. *On December 21, 1933,* the Comptroller of the Currency certified the completion of all acts required in his

approval of said plan and agreement; that the plan was fair and equitable as to all depositors, creditors *and stockholders* and was in the public interest and declared the same to be effective. By carrying out the reorganization plan, the bank was restored to solvency, and the existing assessment revoked both as to consenting and non-consenting stockholders (R. 39 XXI). Non-consenting stockholders (only a few of whom were solvent) representing approximately 2000 shares of stock were thus relieved of liability (R. 40 XXIII; 31 VI).

6. *On January 10, 1940,* depositors and creditors not having theretofore received 70% of their claims (R. 31 X, 32), demand was made for the payment of stockholders' notes pursuant to the terms and conditions of the plan. The Hamilton National Bank succeeded Carter as trustee upon the death of Carter in January, 1935 (R. 3), and, having declined to make payment in response to this demand, suit was commenced (R. 9).

7. The petitioners herein are the present trustees under said plan of reorganization and the respondent herein is the present executor and trustee of the estate of Hal S. Harris.

II.

Jurisdictional Statement.

1. *The jurisdiction of this Court* is based upon U. S. C., Title 28, Sec. 344(b) (Judicial Code, Sec. 237, Amended).

The decision of the Supreme Court of Tennessee, the highest court of said State, sought to be reviewed herein, was rendered and entered January 22, 1941, and a petition for rehearing seasonably applied for, was denied on March 8, 1941, and said decree became final on March 8, 1941. This petition, together with a certified transcript of the record, is filed in this Court within three months after said decree became final.

2. *The Federal statutes involved are:*

(a) U. S. C., Title 12, Sec. 207, part of the "Bank Conservation Act", reading as follows:

> "In any reorganization of any bank under a plan of a kind which under existing law, requires the consent, as the case may be, (a) of depositors and other creditors or (b) of stockholders or (c) of both depositors and other creditors and stockholders, such reorganization shall become effective only (1) when the Comptroller of the Currency shall be satisfied that the plan of reorganization is fair and equitable as to all depositors, other creditors, and stockholders and is in the public interest and shall have approved the plan subject to such conditions, restrictions, and limitations as he may prescribe and (2) when, after reasonable notice of such reorganization, as the case may require, (A) depositors and other creditors of such bank representing at least 75 per cent in amount of its total deposits and other liabilities as shown by the books of the bank or (B) stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank or (C) both depositors and other creditors representing at least 75 per cent in amount of the total deposits and other liabilities and stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank, shall have consented in writing to the plan of reorganization: Provided, however, That the claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the 75 per cent thereof as above provided. When such reorganization becomes effective, all books, records, and assets of the bank shall be disposed of in accordance with the provisions of the plan and the affairs of the Bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed

by the Comptroller of the Currency. In any reorganization which shall have been approved and shall have become effective as provided herein, all depositors and other creditors and stockholders of such bank, whether or not they shall have consented to such plan of reorganization, shall be fully and in all respects subject to and bound by its provisions, and claims of all depositors and other creditors shall be treated as if they had consented to such plan of reorganization. (Mar. 9, 1933, c. 1, sec. 20, 48 Stat. 3; May 20, 1933, c. 34, 48 Stat. 72.)"

(b) U. S. C., Title 12, Sec. 66, reading as follows:

"Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estate and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name" (R. S. Sec. 5152).

3. *The question presented is substantial because:*

(a) The binding effect of a reorganization of an insolvent national bank under the foregoing Federal statutes and the validity of a consent thereto were determined and denied under State laws. If this decision is permitted to stand, then reorganizations under the National Banking laws and rights and liabilities which result from such reorganizations are subject to control, frustration or prevention by the varying statutes and decisions of forty-eight States, and the action of a Federal agency declaring such a reorganization effective under Federal law is, in reality, valid only to the extent permitted by State laws.

(b) The National Banking laws constitute a complete code for the government of national banks—their reorganization, management, liquidation, reorganization, but if this

decision is permitted to stand, then an exception is grafted onto the code as to reorganizations and an encroachment is allowed by a State in a field heretofore held to be one exclusively for uniform Federal law and regulation.

(c) The denial of a recovery to petitioners by the Supreme Court of Tennessee by application of law, deprives petitioners, as trustees representing thousands of depositors, of a title, privilege or right vested in them by operation of a Federal statute in depriving them of the benefit of this note for $28,000.00; a note executed by a stockholder in order to obtain approval of a plan of reorganization under which an existing assessment of like amount was revoked—an assessment which cannot now be restored; a note relied upon by depositors and creditors in waiving their claims against an insolvent bank; a note executed pursuant to a plan authorized under Federal laws and approved and declared effective by a Federal agency; a note, the title and right to which is vested in petitioners pursuant to the Bank Conservation Act.

4. *The Federal Question Raised.*

The only fundamental question before the Court in this case was the binding effect of a consent to a plan of reorganization of a national bank and the validity of a note executed pursuant to such a plan.

The case could not be decided without deciding this question.

It was raised first in the trial court in the original bill (R. 1, 4 III, 5, 6, 7, 8, 9) and denied in the answer of respondent (R. 18 III, 19, 22). The stipulation of the parties contains the facts upon which it was based (R. 29 to 40). It was decided by the Chancellor in his opinion (R. 4[illegible] 49) and confirmed in the decree entered based upon this opinion (R. 49 to 51).

It was again raised on the appeal of respondent to the Supreme Court of Tennessee in the assignments of error in behalf of respondent (R. 57, 58, 59) and particularly the "Third" (R. 57), "Fifth" (R. 57), and "Twelfth" (R. 59). It was continued in the conclusion of respondent as to the question involved in its appeal (R. 59-60).

Emphasizing their contention that the liability of this estate was created under Federal law (R. 67-68), petitioners replied to these assignments and supported the action of the Chancellor by brief and argument (R. 61 to 67).

The Supreme Court of Tennessee, in its opinion (R. 70 to 85), reviews the reorganization (R. 71-72), considers specifically the authority of the respondent trustee to consent to the reorganization (R. 75 to 81) and holds that the Bank Conservation Act provides "leeway so that infants, non-residents and stock held in trust without powers adequate to act, etc. might be left out and the reorganization proceeded with by those who were *sui juris* and competent and qualified to act for themselves" (R. 78).

The opinion further considered the relationship of Carter, Trustee, to the bank and his trust (R. 81) and finally decided that the Chancellor was in error, reversed his decree and granted the affirmative relief sought by respondent (R. 85).

The opinion and decree were challenged in a petition to rehear seasonably filed (R. 85-86) and the construction and binding effect of the Bank Conservation Act again called to the attention of the court (R. 87 II, 88).

In an opinion in response to the petition to rehear, the Supreme Court of Tennessee affirms its original holding (R. 104) and definitely sustains two assignments of error made by respondent (R. 105), the "Fifth" (R. 57) to the effect that the trustee was without power to consent to the reorganization and the "Twelfth" (R. 59) to the effect that

the trustee, by reason of his position, could not act for the trust estate.

III.

The Questions Presented.

1. Is a trust estate which is a legal owner and holder of stock in a national bank and against which a valid 100% assessment has been made, bound by its consent to a plan of reorganization of the bank and liable on a note for the amount of this assessment executed pursuant to the plan, where the plan of reorganization is proposed under the provisions of the Bank Conservation Act (U. S. C. A. Title 12, Sec. 207) and is made effective thereunder by the Comptroller of the Currency pursuant to the authority vested in the Comptroller by the Act?

2. Is the right of a trustee lawfully owning stock in a national bank to consent to a plan of reorganization thereof under the Bank Conservation Act vested in such trustee as an incident of ownership of stock in a national bank?

3. Can a trust estate lawfully owning stock in a national bank execute a note pursuant to a plan of reorganization thereof under the Bank Conservation Act for the amount of a valid 100% assessment then existing where, under the terms of the plan, the note so executed becomes an asset for the benefit of depositors and the bank is thereby restored to solvency and the assessment revoked, and subsequently question the power of the trustee so to consent?

IV.

Reasons Relied On for the Allowance of the Writ of Certiorari.

1. The Supreme Court of Tennessee has decided a Federal question of substance, and holds that the binding effect of a plan of reorganization of a national bank made effective

under the Bank Conservation Act is determined as to a trustee consenting thereto by local laws and specific powers vested in the trustee by the trust instrument, and not under Federal laws, which decision is probably contrary to the decisions of this Court, including the following:

Deitrick v. *Greaney*, 309 U. S. 190;
Yonkers v. *Downey*, 309 U. S. 590;
Awotin v. *Atlas Exchange National Bank*, 295 U. S. 209;
Forrest v. *Jack*, 294 U. S. 158;
Seabury v. *Green*, 294 U. S. 165;
Jones National Bank v. *Yates*, 240 U. S. 541;
Cook County National Bank v. *U. S.*, 107 U. S. 445.

2. The Supreme Court of Tennessee has decided a Federal question of substance not heretofore decided by this Court, and has held a plan of reorganization of a national bank consented to by a trust estate not binding on the trust estate so consenting. This decision made upon the authority of State law, is contrary to the provisions and purposes of the National Banking laws.

(a) The National Banking Act constitutes a complete code for the organization, operation, liquidation and reorganization of national banks.

Cook County National Bank v. *U. S.*, 107 U. S. 445;
Jones National Bank v. *Yates*, 240 U. S. 541.

(b) A stockholder in a national bank, by accepting stock therein, accepts the provisions of the Act and his obligation is both statutory and contractual in its nature.

Richmond v. *Irons*, 121 U. S. 27 (55).

(c) And among the provisions so accepted is the following:

> "Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and

to the same extent as the testator, intestate, ward, or person interested in such trust funds would be if living and competent to act and hold the stock in his own name" (Title 12, U. S. C., Sec. 66).

(d) This section binds a trust estate lawfully holding stock in a national bank.

Pufahl v. *Parks*, 299 U. S. 217;
Richmond v. *Irons*, 121 U. S. 27 (55).

See also:

Dixon v. *Cannon*, 32 Fed. Sup. 626 (Affirmed 115 F. (2d) 913).

(e) A reorganization of a national bank under Title 12, U. S. C., Sec. 207, requires a finding by the Comptroller of the Currency, among other things, that the plan of reorganization is "fair and equitable as to * * * stockholders and in the public interest".

(f) This finding by the Comptroller of the Currency, acting under Federal authority, may not be trammeled, controlled or prevented by State law, and the liability of a stockholder created under such a plan so approved binds the trust estate under Federal law "in like manner and to the same extent as the testator * * * or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name" (Title 12, U. S. C., Sec. 66).

Forrest v. *Jack*, 294 U. S. 158;
Seabury v. *Green*, 294 U. S. 165.

(g) The stock of the national bank, being lawfully held by the trust estate, made the trust estate subject to the liability of a stockholder, and the trust estate, being legally subject to the liability, had the right to discharge that liability. The judgment of the Supreme Court of Tennessee denying the binding effect of the action of the trustee in so doing is contrary to the provisions and purposes of the

National Banking laws, and, in substance, nullifies their operation.

3. The Supreme Court of Tennessee has decided a Federal question of substance not heretofore decided by this Court, and holds that a note executed by a stockholder in a national bank, pursuant to a plan of reorganization thereof whereby the bank is restored to solvency and the stockholder relieved from a valid existing assessment, can be invalidated under State law almost seven years after its delivery, and after creditors and depositors have relied on it in waiving claims against the insolvent national bank without regard to the fact that the note so executed was delivered in compliance with Federal laws to accomplish a Federal purpose.

(a) The judicial consequences which flow from the reorganization of a national bank under National Banking laws involve a decision of a Federal, and not a State, question.

Deitrick v. *Greaney*, 309 U. S. 190;
Yonkers v. *Downey*, 309 U. S. 590;
Awotin v. *Atlas Exchange National Bank*, 295 U. S. 209;
Seabury v. *Green*, 294 U. S. 165;
Dinan v. *1st Natl. Bank of Detroit*, 117 F. (2d) 459.

(b) A note executed by a stockholder in a national bank in order to restore it to solvency, or enable it to comply with valid Federal laws, is binding without other consideration.

Deitrick v. *Greaney*, 309 U. S. 190.

(c) And where creditors and others rely on the execution and delivery of such a note and waive claims against a bank in consideration thereof, and the stockholder thereby obtains approval of a plan of reorganization revoking an existing assessment against a stockholder, the stockholder is estopped to question the validity and binding effect of a note so executed.

Deitrick v. *Greaney*, 309 U. S. 190 (196-7);
Brandt v. *Virginia C. & I. Co.*, 93 U. S. 326.

States will not be permitted by statute or decision to discriminate against national banks or in a collateral proceeding set aside determinations of the Comptroller of the Currency lawfully made in order to defeat the collection of such a note.

Seabury v. *Green*, 194 U. S. 165;
Easton v. *Iowa*, 188 U. S. 220 (238).

The decisions of the Supreme Court of Tennessee ordering cancelled a note under these conditions and executed for these purposes is contrary to the decisions of this Court.

WHEREFORE, your petitioners pray that a writ of certiorari issue under the seal of this Court directed to the Supreme Court of Tennessee, demanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Supreme Court of Tennessee had in the cause numbered and entitled on its docket "Chancery Cause No. 10, from Knox County, M. O. Cowan, et al., Trustees, *vs.* Hamilton National Bank, Trustee", to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States and that the judgment therein of said Supreme Court of Tennessee be reversed by this Court, and for such further relief as to this Court may seem proper.

M. O. COWAN, D. C. WEBB and
VICTOR KLEIN, Trustees Under
the Plan and Agreement for
Reopening the East Tennessee
National Bank,

By M. O. COWAN,
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